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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,473

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Andreas Schopf

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EXAMINER

SAYALA, CHHAYA D

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

10/06/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Office Action Summary	Application No. 10/527,473	Applicant(s) SCHOPF ET AL.	
	Examiner C. SAYALA	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/5/2005</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poppel et al. (US Patent 5792504), Saylock et al. (WO 01/70045) and Dingman et al. (US Patent 6379738) in view of McCulloch (US Patent 4454804).

The primary references of Poppel, Saylock and Dingman all show a pet food product made from meat or meat-like emulsions by extrusion using substantially the same conditions as claimed herein. The references teach a proteinaceous source which is emulsified and conveyed to a holding tube after which it is cut or chopped or shredded. Saylock teaches treating the exterior to obtain a seared or charred look (page 9, paragraph 5) and Poppel teaches at example 1, that the chunks have a browning effect on the exterior. The references differ in that they do not teach injecting color or colors into the holding tube.

McCulloch teaches injecting fat along with a dye while it is being held in the holding tube. See example 1. Col. 5, lines 10-20 shows that when the emulsion is in the holding tube it is in the pressurized zone. Since this step is met, then it must be that the coloring obtained by the invention of the reference must be the same as that of the instant claim since no more or no less is recited than the same step.

Art Unit: 1794

Claims 5-6 is shown for instance at col. 4, line 44 in '504 and col. 5, line 52 in '738. The protein content is at col. 2, lines 40+ in '738 as is the moisture content.

Example 1, in '504 shows the temperatures of instant claim 8.

Col. 6, lines 65-67 in '738 shows instant claim 12.

Col. 8, lines 45-50 show a mechanical system which tears the coagulated meat into pieces before being canned.

With regard to claims 28-39, although McCulloch does not teach coloring only part of the emulsion, this would have been within the realm of ordinary skill based on this reference, since the reference teaches placing the nozzle 1.5 inches from the outer face of the die orifice, then to place it in such a way as to color just the surface would have been obvious. Note that claim 28 does not teach any specific limitation other than "contacting a portion" of the emulsion.

With regard to the dye being water or oil soluble, since there are only two choices in the art, to choose one over the other would have been obvious. It is also well known that dyes that are water-soluble are pH dependent as well, and such a fact would have been obvious to the person of ordinary skill in the art at the time the invention was made.

2. Claims 39-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over over Poppel et al. (US Patent 5792504), Saylock et al. (WO 01/70045) and Dingman et al. (US Patent 6379738) in view of McCulloch (US Patent 4454804) and Ernst (US Patent 4011346).

The primary references are as discussed above. The patent to McCulloch teaches injecting a color into the pet food product. To use more than one color would have been prima facie obvious based on the fact that the patent shows one color. Also, Ernst teaches that after the final product has formed, it can be treated to give "grill marks". The patent also teaches breaking the final product before it is fed to the pet. See example 1. To combine such teachings would have been prima facie obvious because it enhances the appearance and makes convenient the method of feeding, respectively.

Claim Rejections - 35 USC § 102/ Claim Rejections - 35 USC § 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 39-40, 46-48 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ernst (US Patent 4011346).

Ernst teaches a pet food product that made as shown in example 1 produces an emulsion, heated and cooled to form a chunky patty which is then cut before feeding. Since they are hamburger-like patties, then the color of the body is meat-like. At col. 10, lines 62+ the patentee provides "grill-marks" on the meat-like patty. The patentee does not teach that one color was minor and that there were individual pieces with one

Art Unit: 1794

color and other individual pieces with another color. However, if the patent teaches grill marks, then to provide other such indicia would have been obvious. Alternatively, it is not possible for the Office to examine the pieces and determine colors of such pieces and therefore that burden is being shifted to applicant.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala, whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/C. SAYALA/
Primary Examiner, Art Unit 1794**

Application/Control Number: 10/527,473
Art Unit: 1794

Page 6